# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914 1915

No. 534 181

HERMAN H. PINEL AND SARAH SLYFIELD, APPELLANTS,

*vs.*

THOMAS F. PINEL, THOMAS F. PINEL AS SPECIAL ADMINISTRATOR OF THE ESTATE OF EDGAR O. PINEL, DECEASED, AND RACHEL PINEL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED JUNE 19, 1914.

(24,278)

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# Supreme Court of the United States

October Term, 1913.

No. .....

HERMAN H. PINEL AND SARAH SLYFIELD,
*Appellants,*

*vs.*

THOMAS F. PINEL, THOMAS F. PINEL AS SPECIAL ADMINISTRATOR OF THE ESTATE OF EDGAR O. PINEL, DECEASED, AND RACHEL PINEL,
*Appellees.*

**Appeal from the District Court of the United States for the Eastern District of Michigan.**

Filed June .., 1914.

## INDEX

IN THE

# District Court of the United States

For the Eastern District of Michigan, Southern Division.

## IN EQUITY.

### BILL OF COMPLAINT.

(Filed January 30th, 1914.)

To the Judges of the District Court for the United States, for the Eastern District of Michigan, Southern Division, in Equity.

Herman H. Pinel, of the City of San Diego, and a citizen and resident of the State of California, and Sarah Slyfield, of the City of Los Angeles, and also a citizen and resident of the State of California, bring this their Bill of Complaint against Thomas F. Pinel individually and also as Special Administrator of the Estate of Edgar O. Pinel, deceased, of Mt. Clemens, and a citizen and resident of the State of Michigan, and Rachel Campsell, of the City of Seattle, and a citizen and resident of the State of Washington, and thereupon your orators complain as follows:

I. That on and for sometime prior to the 26th day of June, 1888, one Charles T. Pinel, the father of your orators, and also of the said defendants, was possessed in fee simple of a certain farm located in the Township of Erin, in the County of Macomb and State of Michigan, and more particularly described as follows: Land formerly bounded on the north by lands of Ferris and the North line of said Township, on the east by lands of Jessie O. Ferris and the Gratiot Turnpike, on the south by lands of Joseph High and lands of William Curtis, and on the West by lands of Joseph High estate, the Grand Trunk Railway and the lands of Hiram Atwood estate, but now bounded on the north by lands of James Wood, and the Clinton Township north line, on the east by lands of Wood, Taylor, Ferris, Campsell and Gratiot Turnpike, on the south by lands of Kremer and lands of Dopp, and on the west by lands of Chamberlain, lands of

with the location of the said farm; that he has resided in the said vicinity for upwards of eight years and is well acquainted with the value of farm land in and about the vicinity where the Pinel farm is located; that he is informed and verily believes that the said Pinel farm contains eighty-seven acres or thereabouts and that the value of the said farm as a whole is not less than the sum of one hundred seventy-five dollars per acre and that the total value of the said farm is fifteen thousand dollars and upwards; that a large portion of said farm is fronting on Gratiot Avenue and another large portion is located on the so-called Road and that those portions fronting on Gratiot Avenue are worth upwards of two hundred fifty dollars per acre and that portion fronting on the side road is worth upwards of two hundred dollars per acre, but that the whole of said farm is of the value of fifteen thousand dollars and upwards. And further deponent says not.

(Sgd) Albert W. Green.

Subscribed and sworn to before me a Notary Public in and for the County of Macomb and State of Michigan, this 14th day of February, A. D. 1914.

(Sgd) William H. Flory,
Notary Public, Macomb Co., Mich.

My commission expires Dec. 12, 1916.

State of Michigan,
County of Macomb, ss.

Peter Graham, being duly sworn, deposes and says that he resides in the Township of Clinton, in the County of Macomb and State of Michigan, and within the immediate vicinity of the so-called Pinel farm; that he is well acquainted with the location of the said farm; that he has resided in the said vicinity for upwards of eight years and is well acquainted with the value of farm land in and about the vicinity where the Pinel farm is located; that he is informed and verily believes that the said Pinel farm contains eighty-seven acres or thereabouts and that the value of the said farm as a whole is not less than the sum of one hundred seventy-five dollars per acre and that the total value of the said farm is fifteen thousand dollars and upwards; that a large portion of said farm is fronting on Gratiot Avenue and another large portion is located on the so-called Road and that those portions fronting on Gratiot Avenue are worth upwards of two hundred fifty dollars per acre and that portion fronting on the side road is worth upwards of two hundred dollars per acre, but that the whole of said farm is of the value of

fifteen thousand dollars and upwards. And further deponent says not.

(Sgd) Peter Graham.

Subscribed and sworn to before me a Notary Public in and for the County of Macomb, and State of Michigan, this 14th day of February, A. D. 1914.

(Sgd) William H. Flory,
Notary Public, Macomb Co., Michigan.

My commission expires Dec. 12, 1916.

State of Michigan,
County of Macomb, ss.

Charles F. Job, being duly sworn deposes and says that he resides in the Township of Clinton, in the County of Macomb and State of Michigan, and within the immediate vicinity of the so-called Pinel farm; that he is well acquainted with the location of the said farm; that he has resided in the said vicinity for upwards of eight years and is well acquainted with the value of farm land in and about the vicinity where the Pinel farm is located; that he is informed and verily believes that the said Pinel farm contains eighty-seven acres or thereabouts and that the value of the said farm as a whole is not less than the sum of one hundred seventy-five dollars per acre and that the total value of the said farm is fifteen thousand dollars and upwards; that a large portion of said farm is fronting on Gratiot Avenue and another large portion is located on the so-called Road and that those portions fronting on Gratiot Avenue are worth upwards of two hundred fifty dollars per acre and that portion fronting on the side road is worth upwards of two hundred dollars per acre, but that the whole of said farm is of the value of fifteen thousand dollars and upwards. And further deponent says not.

(Sgd) Chas. F. Job.

Subscribed and sworn to before me a Notary Public in and for the County of Macomb and State of Michigan, this 14th day of February, A. D. 1914.

(Sgd) William H. Flory,
Notary Public, Macomb County, Mich.

My commission expires Dec. 12, 1916.

To Lynn M. Johnston,
Solicitor for Defendants.

Please take notice that on Monday, the 23d day of February, 1914, at 9:30 A. M. or as soon thereafter as counsel can be heard, we will move the court for leave to file certain affidavits, in opposition to your motion to dismiss, nunc pro

tunc, a copy of which motion is hereto attached together with copies of the said affidavits.

Yours &c.,

Devine & Snyder,
Solicitors for Complainants.

State of Michigan,
County of Wayne, ss.

Helen M. Lampson, being duly sworn, deposes and says that on the 19th day of February, A. D. 1914, she served a notice of a motion for leave to file affidavits in opposition to motion to dismiss together with copies of affidavits of which the annexed are true copies upon Lynn M. Johnston, solicitor for the defendants in the within entitled cause, by carefully enclosing the same in a sealed envelope, plainly addressed to the said Lynn M. Johnston at Mt. Clemens, Michigan, that being his business address, and depositing the same in the United States post office in the City of Detroit for transmission through the United States mail, with postage fully prepaid.

Helen M. Lampson.

Subscribed and sworn to before me this 19th day of February, A. D. 1914.

Fred H. Devine,
Notary Public in and for Wayne County, Michigan.
My commission expires Sept. 5, 1915.

## BILL TO PERPETUATE TESTIMONY.

(Filed Nov. 5, 1913.)

To the Judges of the District Court for the United States for the Eastern District of Michigan, Southern Division. In Equity.

Herman H. Pinel, of the City of San Diego, and a resident and a citizen of the State of California, brings this, his bill of complaint, against Thomas F. Pinel, of Mt. Clemens, and a resident and a citizen of the State of Michigan, Thomas

F. Pinel, as special administrator of the estate of Edgar O. Pinel, deceased, also of Mt. Clemens, and a resident and a citizen of the State of Michigan, and Rachel Campsell, of Seattle, and a resident and a citizen of the State of Washington. And thereupon your orator complains as follows:

I. That the father of your orator, to-wit, Charles T. Pinel, died at Mt. Clemens, Michigan, on or about the 26th day of June, A. D. 1888, leaving a last will and testament, which was duly admitted to probate by the Probate Court for the County of Macomb and State of Michigan, and by which said last will and testament he left his entire estate, consisting of a farm of about eighty-seven acres in Macomb County, Michigan, as follows, a life estate to his widow, Rachel Pinel, and the remainder to three of his children, namely, to Thomas F. Pinel, Edgar O. Pinel, now deceased, and Rachel Campsell, the defendants herein.

II. That at the time of his death the said Charles T. Pinel, left surviving him, in addition to your orator and the aforesaid Thomas F. Pinel, Edgar O. Pinel and Rachel Campsell, also Sarah Slyfield, Bessie Pinel, since deceased, Charles W. Pinel, James D. Pinel and George W. Pinel, all sons and daughters.

III. That the said Charles T. Pinel omitted to provide in his will for your orator and the said Sarah Slyfield, Charles W. Pinel, James D. Pinel and George W. Pinel, and that such omission was not intentional but was made by mistake or accident.

IV. That the statute laws of the States of Michigan provide that whenever any testator shall omit to provide in his will for any of his children, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child shall have the same share in the estate of said testator as if he had died intestate and that by virtue of the said statute your orator and the said Sarah Slyfield, Charles W. Pinel, James D. Pinel and George W. Pinel are entitled to the same shares respectively in the estate of the said Charles T. Pinel as if he had died intestate, and which estate consists of the following described real estate, situate in the County of Macomb and State of Michigan, to-wit, land known as the Pinel farm, formerly bounded on the north by lands of Ferris and the North line of said township; on the East by the lands of Jessie O. Ferris and the Gratiot Turnpike, on the South by the lands of Joseph High and lands of William Curtis, and on the west by lands of Joseph High estate, the Grand Trunk Railway and the lands of Hiram Atwood estate. But now bounded on the North by lands of James Wood and the Clinton Township north line; on the east by lands of Wood, Marion Taylor, lands of Ferris, Campsell and Gratiot Turnpike; on the south by lands of

Kremer and lands of Dopp; on the west by lands of Dopp, lands of Chamberlain, and the Grand Trunk Railroad, and is of the value of upwards of ten thousand dollars.

V. That your orator has acquired by proper deed of conveyance the shares of the said Sarah Slyfield, Charles W. Pinel and James D. Pinel, and now owns an undivided one-half interest in the said estate, which said half interest is worth of upwards of five thousand dollars.

VI. That the defendants deny the right of the plaintiff to an undivided one-half interest in and to the aforesaid real property and that he therefore proposes to commence some appropriate action to recover his undivided interest in and to the aforesaid property; that your orator was away from home at the time of the death of his father and so remained away and did not learn of his rights in the said estate until quite recently and that by reason thereof he failed to commence proper proceedings to protect his rights sooner.

VII. That his mother, Rachel Pinel is a material witness on his behalf; that she is now eighty-three years of age and in very feeble health and unable to attend court if the cases could be heard at once, and that your orator is afraid that his mother will die before the case comes on for hearing and that by reason thereof her evidence is likely to be lost.

Wherefore your orator prays for leave to examine the said Rachel Pinel touching the matters stated herein to the end that her testimony may be preserved and perpetuated, and may it please this Honorable Court to grant and issue under its seal a Writ of Subpoena ad respondendum of the United States of America directed to the said Thomas F. Pinel, Thomas F. Pinel, Special Administrator of the estate of Edgar O. Pinel and Rachel Campbell, commanding them to appear and answer to this Bill of Complaint and abide by and perform any such orders and decrees herein as to this court may seem proper in the premises.

And your orator will ever pray.

Herman H. Pinel.
By Devine & Snyder,
His Solicitors.

Devine and Snyder,
Solicitors for Complainant and of Counsel.

Eastern District of Michigan, State of Michigan, County of Wayne, City of Detroit, ss.

Sarah Slyfield, of the City of San Diego, San Diego County, California, being duly sworn deposes and says that she has been visiting her mother, Rachel Pinel residing at Mt. Clemens, in the County of Macomb and State of Michigan for the past three months and knows her physical condi-

tion well; that the said Rachel Pinel is now upwards of eighty-four years of age and is not only in very feeble health, but in such a condition that she cannot be brought into court to testify and that any attempt to do so would probably result in her immediate death; that the said Rachel Pinel is in poor health and is not likely to live very much longer; that she is acquainted with the facts stated in the foregoing Bill of Complaint and that the said Rachel Pinel is a material witness for the complainant therein.

Sarah Slyfield.

Subscribed and sworn to before me this third day of November, 1913.

H. M. Lampson,
Notary Public, Wayne County, Michigan.
My commission expires April 22, 1917.

Eastern District of Michigan, State of Michigan, County of Wayne, City of Detroit, ss.

Emil W. Snyder, of the City of Detroit, in the County of Wayne and State of Michigan, being duly sworn, deposes and says that he is a member of the law firm of Devine & Snyder of Detroit, Michigan; that he has been retained by the complainant in the attached bill of complaint to recover for him his distributive share in the estate of Charles T. Pinel, deceased; that he is fully cognizant with the facts set forth in the said bill of complaint and that he has investigated the same; that he believes the said complainant has a good cause of action for the recovery of his share in the said estate but that at the present time this deponent has not been able to determine what action would be most expedient to be brought to recover the said share; that no matter what action may be brought the said Rachel Pinel is a material witness for the complainant; that this deponent is personally acquainted with Rachel Pinel and her physical condition and that he verily believes that the said Rachel Pinel will not live much longer and that with her death the most important testimony for the complainant would be lost.

Emil W. Snyder.

Subscribed and sworn to before me this fourth day of November, A. D. 1913.

H. M. Lampson,
Notary Public, Wayne County, Michigan.
My commission expires Aprill 22, 1917.

RETURN ON SERVICE OF WRIT.

United States of America, Eastern District of Michigan, ss:

I hereby certify and return that I served the annexed

is thoroughly familiar with the said Pinel farm, its location, condition and possibilities, as well as the values of real estate in general in this locality.

And affiant says further that said Pinel farm is situated in a the shape of letter "L" on part fronting on the Gratiot Road so called by about 18 rods and the other end touching a cross road by a frontage of about 200 feet, and that the great portion of said farm is located back of other lands, that said farm consists of about 87 acres of ordinary farm lands and that the fences and buildings on said farm are greatly in need of repair, and that in his best judgment said Pinel farm is not now worth to exceed $9000.00, if the said farm were free and clear from all incumbrances whatever. But affiant is informed and believes that said farm is subject to a mortgage and tax liens amounting to about three thousand dollars, besides the life interest of Rachel Pinel and that the present value of $9000.00 should be reduced by said liens to determine the cash market value thereof, that would be paid by a purchaser.

And affiant further says that he was present at the time Charles T. Pinel executed his will and that at that time Rachel Pinel asked him if he was not going to give something to Charlie (their boy) and he replied, "No he don't deserve anything you know he don't deserve anything."

Dated Feb. 6th, 1914.

John Gohl.

Subscribed and sworn to before me this 9th day of February, 1914.

Mary I. Traver,
Notary Public Macomb County, Mich.
My com. expires Jan. 18th, 1915.

State of Michigan,
County of Macomb, ss.

Christian Dopp being duly sworn deposes and says that for Five years he has been a resident of Mt. Clemens, and vicinity in the neighborhood of the so called Pinel farm on the Gratiot road about one half mile from the city limits of Mt. Clemens, and that he now owns, and has for Three years owned a piece of land adjoining said Pinel farm, that he knows the location and situation of said Pinel farm and its present condition. That he knows personally that it consists of about 87 acres of land and that it is so situated that but a narrow strip of the said farm is upon the Gratiot Road, the main traveled road through Mt. Clemens, that it lays in an L shaped form, and that by far the larger portion of it lays back of other lands fronting the Gratiot Road, and that the other part of said farm also lays back of other lands fronting on another cross road to such an extent that only a small front-

age is on this other road or the Gratiot Road, that it has been allowed to become unproductive, and that the fences and buildings are greatly in need of repair.

Affiant further states that he is familiar with the value of farms and lands all about this place and is familiar with the value of this Pinel farm and that in his best judgment said Pinel farm in its present condition is not worth to exceed $8700.00 if the same were free and clear from all liens or incumbrances.

Dated Feb. 6th, 1914.

Christian Dopp.

Subscribed and sworn to before me this 6th day of February, 1914.

Mary I. Traver,
Notary Public Macomb County, Mich.
My commission expires Jan. 18th, 1915.

State of Michigan,
County of Macomb, ss.

William Chamberlain, John Peters, being duly sworn depose and say that they each own land near the farm known as the Pinel Farm on the Gratiot Road in Clinton Township, Macomb County, and that the land of William Chamberlain joins on said Pinel Farm and the land of said John Peters is separated from said Pinel farm only by the Grand Trunk Railway, said affiants say further that they are acquainted with said Pinal farm, and its condition and value thereof, that the buildings and fences are greatly in need of repair and the land is in poor condition, and that in their best judgment said farm in its present condition is not worth to exceed $8700.00, and that is the full value that in their opinion it could be sold for, or the amount realized on a sale thereof, if the same were free and clear from all incumbrances and liens whatever and the purchasers could take immediate possession.

Wm. Chamberlin
John Peters

Subscribed and sworn to before me this 7th day of February, 1914.

Stuart H. Switzer,
Notary Public Macomb County, Mich.
My com. expires Jan. 13, 1917.

## ORDER DISMISSING BILL OF COMPLAINT.

(Entered by Judge Tuttle Feb. 16, 1914.)

At a session of said court held in the Court House for said District in the City of Detroit on Monday the 16th day of February, 1914.

Present, The Hon. Arthur J. Tuttle, District Judge.

This cause coming on for hearing on Motion of Lynn M. Johnston, Solicitor for Defendant Thomas F. Pinel, Individually, and as Special Administrator for the Estate of Edgar O. Pinel, deceased, praying in said motion that the Bill of complaint in said cause, be dismissed, because this court has no jurisdiction thereof, after hearing counsel for the plaintiffs and said defendants herein, it appearing to this court that this court has no jurisdiction of said cause,

It is hereby Ordered that said Bill of Complaint be and the same is hereby dismissed without prejudice, and with costs to said defendants.

Arthur J. Tuttle,
Judge of the District Court.

To Divine & Snyder.

The above is a copy of the proposed order in the above entitled cause mailed to the clerk of said court by this mail for the signature of the court.

Lynn M. Johnston.

## MOTION FOR LEAVE TO FILE AFFIDAVITS IN OPPOSITION TO MOTION TO DISMISS.

(Filed Feby. 20, 1914.)

And now come the Complainants in the above entitled cause by Devine & Snyder, their Solicitors, and respectfully show unto the court as follows:

I. That on the 30th day of January, 1914, they filed their Bill of Complaint for quieting the title to certain land in the County of Macomb and which land was alleged in the said Bill to be of the value of eighteen thousand dollars and up-

wards and which said bill was duly verified by the oath of one of the said Complainants.

II. That on February 10, 1914, the said defendants made a motion to dismiss the said Bill of Complaint for the want of jurisdiction, to which motion to dismiss there were attached several affidavits alleging the value of the said property to be greatly less than the sum alleged in the said Bill of Complaint.

III. That these Complainants procured the affidavits of Joseph Kreiner, Abram Waggomer, Albert W. Green, Peter Graham and Charles F. Job, showing that the value of the said property is upwards of fifteen thousand dollars, copies of which affidavits are hereto attached.

IV. That these affidavits were procured on the 14th day of February, 1914, with a view of using them in opposition to the motion to dismiss.

V. That the motion to dismiss came on to be heard on February 16th, 1914, and were heard by the court in part, and before the question of the value of the said premises was raised, the court dismissed the Bill of Complaint. And that in view of the motion to dismiss not reaching the point in which the affidavits would be used, Counsel for Complainants did not offer or file the said affidavits, although they were then in the possession of Counsel for Complainants.

VI. That Complainants contemplate reviewing the decision of the court and that in order to get the motion to dismiss before the Appellate Court in its entirety it is necessary that the affidavits be incorporated into the record as a part of Complainants' showing in opposition to the motion to dismiss.

Wherefore these Complainants pray that leave be given to file these affidavits nunc pro tunc as of February 16th, 1914, and these Complainants will ever pray.

Herman H. Pinel
Sara Slyfield
By Devine & Snyder
Their Solicitors.

State of Michigan,
County of Wayne, ss.

Emil W. Snyder, being duly sworn deposes and says that he is one of the Solicitors for the Complainants in the above entitled cause; that he has principal charge of the same and makes this affidavit for and in their behalf because he has personal knowledge of the facts; that he has read the foregoing petition by him subscribed on behalf of the said Complainants and that the same is true of his own knowledge, except as to

matters stated to be upon his information and belief and that as to those matters he believes the same to be true.

Emil M. Snyder.

Subscribed and sworn to before me this 19th day of February, 1914.

H. M. Lampson,
Notary Public, Wayne County, Michigan.
My commision expires April 22, 1917.

## AFFIDAVITS IN OPPOSITION TO MOTION TO DISMISS BILL OF COMPLAINT.

(Filed Feby. 20, 1914, nunc pro tunc as of Feby. 16, 1914, by Special Leave of the Court.)

State of Michigan,
County of Macomb, ss.

Joseph Kremer, being duly sworn, deposes and says that he resides in the Township of Clinton, in the County of Macomb and State of Michigan, and within the immediate vicinity of the so-called Pinel farm; that he is well acquainted with the location of the said farm; that he has resided in the said vicinity for upwards of eight years and is well acquainted with the value of farm land in and about the vicinity where the Pinel farm is located; that he is informed and verily believes that the said Pinel farm contains eighty-seven acres or thereabouts and that the value of the said farm as a whole is not less than the sum of one hundred seventy-five dollars per acre and that the total value of the said farm is fifteen thousand dollars and upwards; that a large portion of said farm is fronting on Gratiot Avenue and another large portion is located on the so-called Road and that those portions fronting on Gratiot Avenue are worth upwards of two hundred fifty dollars per acre and that portion fronting on the side road is worth upwards of two hundred dollars

per acre, but that the whole of said farm is of the value of fifteen thousand dollars and upwards. And further deponent says not.

(Sgd) Joseph Kremer

Subscribed and sworn to before me a Notary Public in and for the County of Macomb and State of Michigan, this 14th day of February, A. D. 1914.

(Sgd) William H. Flory,
Notary Public, Macomb County, Mich.

My commission expires Dec. 12, 1916 .

State of Michigan,
County of Macomb, ss.

Abram Waggomer being duly sworn deposes and says that he resides in the Township of Clinton, in the County of Macomb and state of Michigan, and within the immediate vicinity of the so-called Pinel farm; that he is well acquainted with the location of the said farm; that he has resided in the said vicinity for upwards of eight years and is well acquainted with the value of farm land in and about the vicinity where the Pinel farm is located; that he is informed and verily believes that the said Pinel farm contains eighty-seven acres or thereabouts and that the value of the said farm as a whole is not less than the sum of one hundred seventy-five dollars per acre and that the total value of the said farm is fifteen thousand dollars and upwards; that a large portion of said farm is fronting on Gratiot Avenue and another large portion is located on the so-called Road, and that those portions fronting on Gratiot Avenue are worth upwards of two hundred fifty dollars per acre and that portion fronting on the side road is worth upwards of two hundred dollars per acre, but that the whole of said farm is of the value of fifteen thousand dollars and upwards. And further deponent says not.

(Sgd) Abram Waggomer.

Subscribed and sworn to before me a Notary Public in and for the County of Macomb and State of Michigan, this 14th day of February, A. D. 1914.

(Sgd) William H. Flory,
Notary Public, Macomb Co., Mich.

My commission expires Dec. 12, 1916.

State of Michigan,
County of Macomb, ss.

Albert W. Green, being duly sworn, deposes and says that he resides in the Township of Clinton, in the County of Macomb and State of Michigan, and within the immediate vicinity of the so-called Pinel Farm; that he is well acquainted

the former proceeding No. 51, recently filed in this court between practically the same parties to which reference is hereby made, the same as if attached hereto.

Dated Feb. 9th, 1914.

Lynn M. Johnston,
Solicitor for defendants Thomas F. Pinel.
Business Address, Mt. Clemens, Mich.

County of Macomb, ss.

Thomas F. Pinel, being duly sworn, deposes and says that the said Pinel farm incorrectly described in the bill of complaint in said cause was his home, that he worked on it for many years and is acquainted with its location and condition, and value, and that said farm lays in the shape of the letter "L," one end of which fronts on Gratiot Road and the other end on a cross road with other lands on the corner between it and the highway, so that on the Gratiot Road there is only about 500 feet frontage, and on the other cross road, only about 200 feet frontage, but the greater part of said land lies back of other lands, and that in his estimation, the value of said farm in its present condition would not exceed $10000.00, if the same were free and clear from all encumbrances and liens whatever, and the purchaser could now take immediate possession; but affiant further says that there is a mortgage on the premises of the face value of $2500.00, that the unpaid interest on said mortgage amounts to about $725.00, and the taxes which are not paid by the life tenant, amount to about $236.00 more. That said mortgage was assumed by Charles T. Pinel before his death which occurred about 26 years ago viz: June 27th, 1888; and that said Charles T. Pinel left a will which devised to Thomas F. Pinel the south 20 acres of said farm and to Edgar Pinel, now deceased, and Rachel Pinel the remainder of said farm, all being subject to the life estate devised to Rachel Pinel, his widow, and a lien of five hundred dollars on said lands for the payment of a five hundred dollar legacy bequeathed to Betsy Pinel in case the personal property, of said estate at the time of the death of his widow Rachel Pinel, was insufficient to pay said legacy. So that said premises by the terms of said will is subject also to the life estate of Rachel Pinel, and the payment of the legacy to Betsy Pinel, all of which would reduce to cash value of said premises, or the amount that could be realized by a sale of the same by about $4000.00, or upwards, so that if the value of said premises to the heirs or legatees of Charles T. Pinel, is considered to be the matter in controversy in said cause, it would not exceed $6000.00 at the present time.

Affiant further says the taxes and interest unpaid, have been allowed to accrue by the life tenant whose duty it was to

pay the same, said mortgage having been given prior to her life tenancy.

Affiant further says that he and his brother Edgar Pinel, in his life time offered to sell to Sarah Slyfield, one of the plaintiffs herein, for $10000.00, their interest in said premises, and to cancel said mortgage, and their lien for unapid interest, and taxes paid by them on said premises, and to settle with their sister Rachel for her share thereof and that said Sarah Slyfield declined to accept their proposition.

Affiant further says that he and his brother Edgar, were the only boys of the family who stayed at home and helped their father to the time of his death, that said will was duly admitted to probate about 25 years ago, and that all of the family, including Herman Pinel and Sarah Slyfield, knew the terms of the will at the time it was admitted to probate, or soon thereafter. And affiant does not know of any material facts that have since come to their knowledge in said matter, and does not believe there are any. Affiant further says that he believes that the heirs of Betsey Pinel, his deceased sister, Charles W. Pinel, James T. Pinel and George W. Pinel, his brothers, should be made parties defendants to this suit and that Charles, James, and George Pinel are residents of the state of Michigan.

Thomas F. Pinel.

Subscribed and sworn to before me this 7th day of February, 1914.

Albert W. Taylor,
Notary Public, Macomb County, Mich.
My Com. expires, Feb'y 11-1915.

State of Michigan,
County of Macomb, ss.

John Gould being duly sworn deposes and says that he is a citizen of Mt. Clemens, in the Township of Clinton, Macomb County, that he is now 63 years of age and that for 53 years he lived almost across the Road from the Pinel Farm, so called in Clinton Township, on the Gratiot Road so called, and that his home was located on the opposite side of the street from said Pinel farm on the Gratiot Road so that the south line of his home if extended in a straight line would pass along the north line of the part of the said Pinel farm which fronts on Gratiot Road and would cut through the back sixty acres of said farm. Affiant further states that for many years he owned and worked, this his home farm, and carried on a general farming business, that he has bought and sold a piece of land adjoining said Pinel farm on the north and east, and has bought and sold several other pieces of land in this locality, and has dealt in real estate, in farming lands, and city lots and other property for many years, and that he

lars, and that therefore the District Court has no jurisdiction of the cause.

III. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in dismissing the Bill of Complaint filed by Plaintiffs in Error on the ground that there are three independent parties made principal Defendants, each having separate interests or causes of action and it does not appear from the pleadings at all what the claim of each or both of said Plaintiffs in Error is against each of said Defendants in Error, and it does not appear that the amount in controversy as to each Defendant in Error is in excess of three thousand dollars, and therefore the Court does not acquire jurisdiction of this cause.

IV. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in dismissing the Bill of Complaint filed by Plaintiffs in Error on the ground that the parties to this cause are collusively joined and the alleged transfer of the interests of Charles W. Pinel to Plaintifl in error Sarah Slyfield, as set forth in said Bill of Complaint, appears to be a fictitious and collusive transfer or assignment and therefore the District Court does not acquire jurisdiction of the said cause.

V. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in dismissing the Bill of Complaint filed by Plaintiffs in Error on the ground that Plaintiffs in Error are barred by laches, having waited about 25 years from the accruing of their alleged cause of action without an adequate reason therefor.

VI. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in dismissing the Bill of Complaint filed by Plaintiffs in Error on the ground that Charles W. Pinel, James D. Pinel and George D. Pinel are residents of the State of Michigan and sons of Charles T. Pinel, deceased and heirs of Bessie Pinel, are not made parties to the said Bill of Complaint.

VII. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in dismissing the Bill of Complaint filed by Plaintiffs in Error on the ground that the lands as described in the said Bill of Complaint were never owned by Charles T. Pinel.

VIII. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in not retaining jurisdiction over the said cause.

IX. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in refusing to retain jurisdiction over the said cause.

X. The District Court of the United States for the

Eastern District of Michigan, Southern Division, in Equity, erred in refusing to retain jurisdiction over the said cause on the ground that the amount in controversy is not the sum of three thousand dollars.

XI. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in refusing to retain jurisdiction over the said cause on the ground that the amount in controversy does not come within the limit of the jurisdictional amount.

XII. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in refusing to retain jurisdiction of this cause on the ground that the parties to the said cause of action are collusively joined.

XIII. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in refusing to retain jurisdiction over the said cause on the ground that the said Plaintiffs in Error do not have a common and undivided interest in the said claim, and that the claim of each Plaintiff in Error does not come within the limit of the jurisdictional amount.

XIV. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in not retaining jurisdiction over the said cause on the ground that in cause number 51 recently filed in the said District Court by the said Plaintiff in Error Herman Pinel against the same defendants in Error, which said Bill was dismissed by the said District Court, it was alleged in paragraph five that said Plaintiff in Error, Herman Pinel, has acquired by proper deed of conveyance the shares of Sarah Slyfield, the other Plaintiff in Error, Charles W. Pinel and James D. Pinel, and in the present Bill of Complaint in the present case it is alleged in paragraph seven that Charles W. Pinel has conveyed his interest to Plaintiff in Error Sarah Slyfield.

XV. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in refusing to retain jurisdiction over the said cause on the ground that about twenty-five years have elapsed since the settlement of the estate of Charles W. Pinel, from which Plaintiffs in Error claim to derive their right of action and the date of the aforesaid deed and the beginning of the said action.

XVI. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in refusing to retain jurisdiction over the said cause on the ground that no facts are set forth in the said Bill of Complaint which would excuse or explain the above delay.

Devine & Snyder,

**Attorneys for Plaintiffs in Error**

827-829 Majestic Building,
Detroit, Michigan.

State of Michigan
County of Wayne, ss.

Helen M. Lampson, being duly sworn deposes and says that on the 8th day of April, A. D. 1914, she served a copy of "Assignment of Errors" of which the annexed is a true copy, upon Lynn M. Johnston, Attorney for the Defendants in Error in the within entitled cause, by carefully enclosing the same in a sealed envelope, plainly addressed to the said Lynn M. Johnston at Mt. Clemens, Michigan, that being his business address, and depositing the same in the United States Post Office in the City of Detroit, Michigan, for transmission through the United States mail, with postage fully prepaid.

Helen M. Lampson.

Subscribed and sworn to before me this 8th day of April, A. D., 1914.

William H. Shiek,
Notary Public in and for Wayne County, Michigan.
My commission expires Sept. 30, 1917.

## BOND ON APPEAL.

(Filed April 23. 1914.)

Know All Men By These Presents, that we, Herman H. Pinel, of the City of San Diego, and Sarah Shyfield, of the City of Los Angeles, both in the State of California, as principals, and the Massachusetts Bonding & Insurance Company, a Massachusetts corporation having its principal office in the City of Boston, and State of Massachusetts, as surety, are held and firmly bound unto the above named Thomas F. Pinel, individually, and Tohmas F. Pinel as special administrator of the estate of Edgar O. Pinel, deceased, in the sum of two hundred fifty dollars, to be paid to the said Thomas F. Pinel, dividually, and Thomas F. Pinel as special administrator of the estate of Edgar O. Pinel, deceased, and each of us, our, and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 23d day of April, A. D. 1914.

Whereas, the above named Herman H. Pinel and Sarah Slyfield, have prosecuted an appeal to the Supreme Court of the United States to reverse the order dismissing the Bill of Complaint rendered in the above entitled suit by the Judge of the District Court of the United States for the Eastern District of Michigan, Southern Division.

Now therefore, the condition of this obligation is such that if the above named Herman H. Pinel and Sarah Slyfield shall prosecute said appeal to effect an answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

Herman H. Pinel
Sarah Slyfield
Massachusetts Bonding & Insurance Co.
By Harry Hanford,
Attorney in fact.

(Seal of Bonding Co.)

I herewith approve the foregoing bond both as to form and surety.

Arthur J. Tuttle,
District Judge.

## CITATION.

THE SUPREME COURT OF THE UNITED STATES
United States of America, ss.

To Thomas F. Pinel, Thomas F. Pinel, as Special Administrator of the Estate of Edgar O. Pinel, deceased, and Rachel Pinel, greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington, D. C., on the* 13th day of June next, pursuant to an Appeal filed in the Clerk's Office of the District Court of the United States for the Eastern

District of Michigan, wherein Herman H. Pinel and Sarah Slyfield are Appellants and you are Appelles to show cause, if any there be, why the Decree rendered against the said Appellants in the said Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglas White, Chief Justice of the United States, this 15th day of May in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-eighth.

Arthur J. Tuttle,
United States District Judge.

*Not exceeding 30 days from the day of signing.

Due and timely service of the within citation is hereby accepted.

Lynn M. Johnston,
Solicitor for Defendants.

## COMPLAINANT'S DESIGNATION FOR PRINTED RECORD ON APPEAL.

(Filed April 24, 1914.)

To the Clerk of the District Court:

In making up the record on appeal to the Supreme Court in the above entitled cause, will you insert in such record the following papers now on file in your court in said cause:

Bill of Complaint.

The motion to Dismiss the Bill of Complaint.

The Affidavits filed on behalf of the Complainants.

The Calendar Entry permitting these affidavits to be filed nunc pro tunc as of February 16, 1914.

The Order Dismissing the Bill of Complaint.

The petition for leave to Appeal.

The Certificate of the Judge certifying as to the jurisdiction.

The Assignments of error.

The Appeal Bond.

Yours etc.

Devine and Snyder,
Attorneys for Complainants.

State of Michigan
County of Wayne, ss.

Helen M. Lampson, being duly sworn, deposes and says that on the 23rd day of April, A. D. 1914, she served a praecipe for record of which the annexed is the original upon Lynn M. Johnston, solicitor for the defendants in the within entitled cause, by carefully enclosing the same in a sealed envelope, plainly addressed to the said Lynn M. Johnston at Mt. Clemens, Michigan, that being his business address and depositing the same in the United States post office in the City of Detroit, Michigan, for transmission through the United States mail, with postage fully prepaid.

Helen M. Lampson.

Subscribed and sworn to before me this 23rd day of April, A. D. 1914

Stephen H. Howell,
Notary Public in and for Wayne County, Michigan.
My commission expires Sept. 20, 1915.

## DEFENDANTS' DESIGNATION OF RECORD ON APPEAL.

(Filed May 2, 1914.)

To the Clerk of the District Court:

In making up the record on appeal, to the Supreme Court, in the above entitled cause, kindly insert in said record the following papers now on file in your court in the cause No. 51 of Herman Pinel vs. Thomas Pinel et al.:

Bill of Complaint.

Answer to Bill of Complaint.

Yours truly,

Lynn M. Johnston,
Solicitor for Defendant Thomas F. Pinel.

ever against said estate, or that he wanted or expected any part of it at any time and therefore said defendants have never had any occasion to deny plaintiff any rights or title to said estate prior to the filing of the bill of complaint in this matter.

And defendants further answering aver that plaintiff has for about 25 years been thoroughly familiar with the will of his father, and all the family relations of his mother, brothers and sisters relative thereto; and it is not the belief of defendants that said plaintiff has recently discovered anything new in that respect or that there is anything new therein to be discovered.

X. Said defendants further answering say that for several years they have been bitterly opposed by a sister, Sarah Slyfield, and that it is their firm belief that she is the instigator of this whole proceeding, and that said plaintiff, Herman Pinel, has no true conception of what is being attempted in this court, and that he never knowingly gave any authority for starting this proceeding, or any other against defendants, at this time or any other in any court for any purpose, or that he willingly lent his name to be used against defendants.

XI. Defendants further answering say that the entire property of which plaintiff, in his bill claims a share, consists of about 87 acres of ordinary farm property, and that if the same could be sold at present free and clear of all encumbrances and liens, it would probably not sell for $10000.00, or not to exceed that amount; that said property is encumbered by a mortgage given by Charles T. Pinel before his death amounting, with interest now unpaid to about $3200.00; that the unpaid taxes of said premises amount to about $150.00 more; that a provision in the will of said Charles T. Pinel, subjects said land to the payment of $500 more to Betsy Pinel and a life estate to Rachel Pinel. So that the value of said premises, free and clear from all said liens and encumbrances is not above $5000.00. Plaintiff could have for his share, if there was no will, not to exceed one eighth of this amount, and even one half of this amount is less than $3000.00, the amount necessary to give this court jurisdiction.

But defendants further answering believe that if said plaintiff has acquired the interests of any others in said estate it has been done only for the purpose of commencing, or threatening to commence an action in this court, and is in the nature of a collusive conveyance or assignment for that purpose, and that this court has no jurisdiction of said matter unless plaintiff's one independ-

ent interest, if he has any, is, or was an amount exceeding $3000.00.

Defendants therefore pray that said bill of complaint be dismissed for the following reasons:

(a) The said bill of complaint is not signed or verified by plaintiff.

(b) Security for costs has not been filed in accordance with the requirements of local Equity Rule No. 2.

(c) Plaintiff's interest in said action or property of Charles T. Pinel, deceased, is less than $3000.00 or the amount necessary to give this court jurisdiction.

(d) George W. Pinel, a son of Charles T. Pinel, deceased is not made a party to this proceeding.

Or if this court considers that the prayer of said petition should not be wholly denied and said bill dismissed, then defendants pray that said prayer be granted only upon condition that:

(a) Plaintiff file security for costs as required by said equity rule.

(b) Said deposition be used as evidence within one year in a suit begun by plaintiff against defendants herein, or defendant recover costs for taking deposition.

(c) And that plaintiff sign and verify said bill of complaint in person, or that authority directly from him be produced for beginning said suit, before an order is made in favor of plaintiff's petition.

Thomas F. Pinel,
Defendant individually and as special administrator for the estate of Edgar Pinel, deceased.

Lynn M. Johnston,
Solicitor for said defendant Thomas F. Pinel.

On this 26th day of November 1913 personally appeared before me Thomas F. Pinel who being duly sworn deposes and says that he signed the foreging bill, that he has read it and knows the contents thereof and that the same is true of his own knowledge except those matters therein stated on information or belief and as to those matters he believes them to be true.

H. O. Chapaton,
Notary Public for Macomb County, Mich.
My commission expires Aug. 6, 1917.

## PETITION FOR LEAVE TO APPEAL.

(Filed March 16, 1914.)

And now come the complainants in the above entitled cause by Devine & Snyder, their solicitors, and pray:

First: For leave to appeal to the Supreme Court of the United States from the decree of this court dismissing the bill of complaint heretofore filed by these complainants on the ground that the court had no jurisdiction of the subject matter.

Second: That the court certified to the Supreme Court the question of jurisdiction as required by Section 238 of the Judicial Code of the United States.

And these complainants will ever pray.

Herman Pinel,
Sara Slyfield,
By Devine & Snyder,
Their Solicitors.

## ORDER ALLOWING APPEAL.

(Entered by Judge Tuttle, May 15, 1914.)

At a session of the District Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court Room in the City of Detroit, in said district on Friday the fifteenth day of May, in the year of our Lord one thousand nine hundred and fourteen.

Present: The Honorable Arthur J. Tuttle, District Judge.

On reading and filing petition for appeal, in the above entitled cause, to the Supreme Court of the United States, and it appearing to the court that the complainants have filed their assignments of error as required by the rules of the Supreme Court of the United States, it is

Ordered that the appeal be and the same is hereby

allowed as prayed for, and the amount of the bond on said appeal, be and the same is hereby fixed at the sum of two hundred and fifty dollars.

Arthur J. Tuttle,
District Judge.

## CERTIFICATE OF JURISDICTION AND PROPOSED CERTIFICATE OF QUESTION OF JURISDICTION AND PROOF OF SERVICE.

(Filed March 16, 1914.)

The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, hereby certifies to the Supreme Court of the United States that on the 16th day of February, 1914, a decree was entered in the above entitled cause pursuant to the decision of said court sustaining a motion to dismiss filed by defendants, Thomas F. Pinel and Thomas F. Pinel, administrator, to the Bill of Complaint of complainants Herman H. Pinel and Sarah Slyfield, on all the grounds specified in said motion to dismiss, namely,

"I. It does not appear from said Bill of Complaint that the amount in controversy is sufficient to give this court jurisdiction, it is not alleged to be an amount exceeding three thousand dollars, as required by statute, and is not in fact an amount sufficient to give this court jurisdiction,—because, among other reasons:

(a) Plaintiffs have separate causes of action, and it does not appear from said Bill of Complaint, that the amount claimed by each exceeds $3000.00.

(b) There are three independent parties made principal defendants, each having separate interests or causes of action, and it does not appear from the pleadings at all what the claim of each, or both of said plaintiffs is against each of said defendants, and does not appear that the amount in controversy as to each defendant is in excess of three thousand dollars, or the necessary jurisdictional amount, and, in fact, cannot be said amount, under the allegations of said Bill of Complaint, and is not.

II. The parties to said cause are collusively joined, and the alleged transfer of the interest of Charles W. Pinel to Sarah Slyfield, as set forth in the Bill of Complaint, appears to be a fictitious and collusive transfer, or assignment, for the purpose of giving this court jurisdiction, because among other reasons:

(a) In the Bill of Complaint in case No. 51 recently filed in this court by said Herman Pinel against these same defendants,—which said bill was dismissed by this court, —it was alleged in paragraph 5, that "your orator (Herman Pinel) has acquired by proper deed of conveyance the shares of Sarah Slyfield, Charles W. Pinel and James D. Pinel," (the date of which deed plaintiff's counsel, in open court stated to be October 21st, 1913, or thereabouts), and in this Bill of Complaint in the present case, it is alleged in paragraph VII that Charles W. Pinel has conveyed his interest to Sarah Slyfield.

(b) About 25 years have elapsed since the settlement of the estate of Charles W. Pinel, from which plaintiffs claim to derive their right of action, and the dates of the said deeds and the beginning of said action.

(c) No facts are set forth in said bill which would excuse or explain said delay.

III. Plaintiffs are barred by latches, having waited about twenty-five years from the accruing of their alleged cause of action, without an adequate reason therefor.

IV. Charles W. Pinel, James D. Pinel and George T. Pinel, all residents of the state, and sons of Charles T. Pinel, deceased, and the heirs of Betsy Pinel, are not made parties hereto.

V. The lands as described in said Bill of Complaint, were never owned by Charles T. Pinel."

A copy of such motion to dismiss is contained in the case on appeal filed herein to which reference is had for a more particular description thereof.

And this court further certifies that in said cause the jurisdiction of this cause is in issue and further certifies to the Supreme Court of the United States said question of jurisdiction raised by said motion to dismiss the said Bill of Complaint on the grounds aforesaid, namely,

(1) Whether or not the amount in controversy is sufficient to give this court jurisdiction.

(2) Whether or not the parties to said cause are collusively joined.

Dated: Detroit, Michigan, March 16, 1914.

Arthur J. Tuttle,
United States Judge.

State of Michigan,
County of Wayne, ss.

Helen M. Lampson, being duly sworn, deposes and says that on the 11th day of March, A. D. 1914, she served a copy of a petition for leave to appeal and certificate of jurisdiction and proposed certificate of question of jurisdiction, of which the annexed are true copies upon Lynn M. Johnston, solicitor for the defendants in the within entitled cause, by carefully enclosing the same in a sealed envelope, plainly addressed to the said Lynn M. Johnston at Mt. Clemens, Michigan, that being his business address, and depositing the same in the United States post office in the City of Detroit, Michigan, for transmission through the United States mail, with postage fully prepaid.

Helen M. Lampson,

Subscribed and sworn to this 11th day of March, A. D. 1914.

Fred H. Devine,

Notary Public in and for Wayne County, Michigan. My commission expires Sept 5, 1915.

## ASSIGNMENT OF ERRORS.

(Filed April 8, 1914.)

And now come Herman H. Pinel and Sarah Slyfield, Plaintiffs in error, and make and file this, their assignment of errors.

I. The District Court for the Eastern District of Michigan, Southern Division, in Equity, erred in dismissing the Bill of Complaint filed by Plaintiffs in Error on the ground that the amount in controversy is not sufficient to give the District court jurisdiction.

II. The District Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, erred in dismissing the Bill of Complaint filed by Plaintiffs in Error on the ground that Plaintiffs had separate causes of action and it does not appear from the said Bill of Complaint that the amount claimed by each exceeds three thousand dol-

Bill of Complaint on the therein named Thomas F. Pinel individually and as administrator of estate of Edgar O. Pinel, deceased, by handing to and leaving a true and correct copy thereof with him personally at Clinton Township, Macomb County, in said District on the 7th day of November, A. D. 1913.

Milo D. Campbell, U. S. Marshal.
By John V. Trollope, Deputy.

## ANSWER OF THOMAS F. PINEL TO BILL TO PERPETUATE TESTIMONY.

(Filed Nov. 28, 1913.)

The answer of Thomas F. Pinel, individually and Thomas F. Pinel as Special Adiministrator of the Estate of Edgar O. Pinel, deceased, to the Bill of Complaint of plaintiff Herman H. Pinel respectfully answers:

I. He admits the allegations of Paragraph one with the additional fact that said farm was encumbered with a mortgage of about $5000 at the death of said Charles T. Pinel and provision was made in said will for Bessie Pinel.

II. He admits paragraph two.

III. He admits that Charles T. Pinel omitted to provide in his will for Sarah Slyfield, Charles W. Pinel, James D. Pinel, George W. Pinel and Herman Pinel, but denies that said omission was made by mistake or accident, but states that said will was in accordance with the wishes of said Charles T. Pinel.

IV. He admits that there is in Michigan a statute in substance as given by plaintiff, but denies that by reason thereof said petitioner, Sarah Slyfield, Charles W. Pinel, James D. Pinel, and George W. Pinel, or any of them are entitled to any of the lands named in said petition, or share thereof or any other of the property owned by said Charles T. Pinel, or share thereof, or that said named persons or any of them are entitled to any of the property of said Charles T. Pinel, deceased, for any reason whatsoever.

V. As to paragraph five of said bill of complaint, this defendant does not know what conveyances have been made to petitioner, Herman Pinel, and leaves him to his proofs in this regard. But he denies that said plaintiff owns a one-half interest in said estate or lands, or that a one-half interest in the same is worth five thousand dollars.

VI. These defendants further deny the right of said plaintiff to any share of the estate of said Charles T. Pinel and do not believe that petitioner ever intends to commence any "appropriate action" to recover any interest in said estate, or that plaintiff has learned of any rights or facts in said matter which he did not know 25 years ago. And further deny that said Herman Pinel ever in any way demanded any share of said estate, or that he ever claimed any share thereof, so far as these defendants know. But admit that said Herman Pinel was away from home at the time of the death of his father and before and after the same.

VII. Defendants admit that their mother is about 83 years old, and deny the other allegations of paragraph seven of said bill of complaint.

VIII. This defendant further answering individually and as special administrator of the estate of Edgar Pinel, deceased, says and avers that the will of Charles T. Pinel was duly admitted to probate about 25 years ago, and that no appeal was ever taken therefrom, or so far as defendant knows was never attemplated by any one; that Thomas F. Pinel and Edgar O. Pinel were the only boys of the family of said Charles T. Pinel who stayed at home and helped their father to any great extent, that Charles W. Pinel and plaintiff were away at the time of the death of their father, plaintiff having run away from home against his father's wishes and that he and that Charles W. Pinel and George Pinel were unfriendly to their father; and further that the will of said Charles T. Pinel embodied in it the reason why defendant was remembered in the words "I give and devise to my son Thomas Pinel, who has been a faithful son to me," etc.

IX. Defendant further answering says that plaintiff visited defendants Thomas and Edgar Pinel, and their people at their homes and at the said farm in question about 12 years ago and twice since that time, the last time being about two years ago; that on all occasions plaintiff demeaned himself in a most friendly manner towards his brothers Thomas and Edgar Pinel in every way as a returning brother might be expected to do; that he never in any way intimated that he was dissatisfied with the will of his father, or the provisions made therein, so far as defendant knows. Defendant is not aware that plaintiff ever expressed to any one any dissatisfaction in said matter, or that he made any claim what-

of such amount and dicloses no facts which contradict such allegation.

*North American Cold Storage Co. vs. City of Chicago, et al.*, 151 Fed. 120.

Therefore the bill in the case at bar gives the Court jurisdiction unless the parties have separate actions and each claim *must* exceed three thousand dollars, but we submit that this is not the law.

In *Clay vs. Field*, 138 U. S. 464 (p. 479) the rule is stated thusly:

> "If several persons be joined in a suit in equity or admiralty, and have a *common* and *undivided* interest, though separable as between themselves, the amount of their joint claim or liability is the test of jurisdiction."

And this rule has been followed by the Courts in a great number of cases; thus in

*Lehigh Zinc & Iron Co. vs. N. J. Zinc & Iron Co.*, 43 Fed. 545,

it was held that for the purpose of determining the jurisdictional amount in a bill to quiet title (the same as in the case at bar) the whole value of the property, the possession or enjoyment of which is threatened by Defendant, is a measure of the value of the matters in controversy.

This case was followed and cited in

*Woodside vs. Ciceroni*, 93 Fed. 1., and
*Greenfield vs. U. S. Mortgage Co.*, 133 Fed. 788.

So in a suit by the owners of separate lots who derived title from a common grantor to quiet their title as against the Defendant who claims to own all the lots, it was held that the amount in controversy is the value of all the lots owned by the Complainants and not the value of separate lots of each.

*Lovett vs. Prentice*, 44 Fed. 459.

This case is on all fours with the case at bar. Here also Complainants derived their title from a common grantor and are seeking to quiet the title against a Defendant who claims to own all the property.

So also in

*Bates vs. Carpentier, et al.*, 98 Fed. 452,

it was held that where a number of persons claim an *undivided* interest in real property adversely to one in possession of the same, the latter may maintain a suit to quiet the title against *any* or *all* of said persons, and either of said persons are adverse claimants and a necessary party to a suit for the purpose of the other.

Complainants "have a common and *undivided* interest in the claim and it is perfectly immaterial to the Defendants how it is going to be shared among them."

*Shields vs. Thomas*, 17 How. 3-6 (15 Law. Ed. 93).

But we submit further that even if each appellant had necessarily to stand on his own feet and state the jurisdictional amount of his own individual claim, the bill is still sufficient to give the Court jurisdiction at least so far as Complainant Slyfield is concerned.

The Bill alleges that Appellants own an undivided three-eighths interest in the property and that such interest is of the value of forty-five hundred dollars. This makes each one-eighth interest of the value of one thousand five hundred dollars. The bill alleges that Appellant Herman Pinel owns an undivided one-eighth interest and Appellant Sarah Slyfield an undivided two-eighths interest. In other words, Herman Pinel's interest is worth one thousand five hundred dollars and Sarah Slyfield's interest three thousand dollars.

This at once gives the Court jurisdiction so far as Appellant Slyfield is concerned, *if three thousand dollars is the jurisdictional amount*, but we submit that it is not.

The limit of the jurisdictional amount in this case is *not* three thousand dollars, but two thousand, for the reason

that the statutory amount at the time the cause of action arose governs and not the amount at the time of bringing the suit.

*Taylor vs. Midland Valley Railway Co.*, 197 Fed. 323.

The cause of action in the case at bar arose at the time of the father's death, June 26, 1888, and at that time the jurisdictional amount was two thousand dollars.

*Sect. 1, Judiciary Act 1887*, 24 U. S. Stat. 552 (c. 373).

So we submit in closing on this point that the amount in controversy is sufficient to give the court jurisdiction.

## II.

THE PARTIES TO SAID CAUSE ARE NOT COLLUSIVELY JOINED.

The learned District Judge further certifies that the second question involved in this proceeding is "whether or not the parties to said cause are collusively joined" (Rec. p. 28).

What makes the learned District Judge think so? Well, counsel for Defendants in his motion to dismiss says "the parties to said cause *are* collusively joined and the alleged transfer of the interest of Charles W. Pinel to Sarah Slyfield, as set forth in the Bill of Complaint, appears to be a fictitious and collusive transfer, or assignment, for the purpose of giving this Court jurisdiction, because among other reasons: (a) In the Bill of Complaint in case No. 5 recently filed in this Court by said Herman Pinel against these same Defendants—which said bill was dismissed by this Court—it was alleged in paragraph five that "your orator (Herman Pinel) has acquired by proper deed of conveyance the shares of Sarah Slyfield, Charles W. Pinel and James D. Pinel" (the date of which deed Plaintiffs' Counsel, in open Court, stated to be October 21st, 1913, or there-

abouts; and in this Bill of Complaint in the present case, it is alleged in paragraph VII that Charles W. Pinel has conveyed his interest to Sarah Slyfield. (b) About 25 years have elapsed since the settlement of the estate of Charles W. Pinel, from which Plaintiffs claim to derive their right of action and the date of said deeds and the beginning of said action. (c) No facts are set forth in said Bill which could excuse or explain said delay."

So here we have it. Counsel says a thing is so and so and consequently it *must* be so. Well, let us take up Subdivision "c" first and see how much there is to it. We submit that paragraph ten of the Bill of Complaint very explicitly explains the reason why Appellants did not move in this matter sooner. This paragraph reads:

> "X. That your orators were away from home at the time of the death of their father and were not present in the State of Michigan when the will was admitted to Probate, and in fact were not advised that they had any right in the premises, whatsoever, and your orators allege and charge the fact to be that they did not learn of the fact that the omission to provide for them in the will was made by mistake or accident until about nine months ago; that they at once took steps to ascertain the true facts of the case and to investigate what their legal rights in this matter were and that thereupon they were informed of the provisions of the Statute of the State of Michigan and they at once instructed their Attorney to commence the proper proceedings to enforce their rights. And in this respect your orators aver and charge the fact to be that they were purposely misled by the said Thomas F. Pinel, one of the Defendants herein as to the wishes of the father with regard to his last will and testament. And your orators further aver and charge the fact to be that they are informed and verily believe that Charles W. Pinel, who sold all his right, title and interest in said

premises and estate to Complainant Slyfield, was not aware of his right in the premises until advised by Complainant Slyfield shortly after she learned that Complainants were entitled to their distributive shares in said estate."

What could be more specific than this explanation and the charge of fraud upon Defendants' part, and the Court has *no right* to dismiss a cause on the ground that it does not involve a dispute or controversy within its jurisdiction unless the facts *when made distinctly to appear of record* create a *legal certainty* of the conclusion based on them, and in making the order dismissing the bill the Circuit Court exercises a legal and not a personal discretion, which must be exerted in view of the facts sufficiently proven and controlled by fixed rules of law. It might happen that the Judge, on the trial or hearing of a cause, would receive impressions amounting to a moral certainty that it does not really and substantially involve a dispute or controversy within the jurisdiction of the Court. But upon such a personal conviction, however strong, he would not be at liberty to act, unless the facts on which the persuasion is based when made distinctly to appear on the record, create a legal certainty of the conclusion based on them. Nothing less than this is meant by the statute when it provides that the failure of its jurisdiction on this question shall appear to the satisfaction of said Circuit Court.

*Barry vs. Edmonds*, 116 U. S. 550.
*Deputron vs. Young*, 134 U. S. 252.

Whence did the Court get the facts on which to base a *legal conclusion* that there is a fictitious transfer in this case. Complainants' bill of complaint does not say so and THERE WERE NO PROOFS. Of course, Counsel for Defendants brings to his aid case No. 51 filed in the same court sometime prior to this suit by one of the Complainants against the same Defendants, but we have as yet to learn the rule under which this Honorable Court can take cognizance of that Bill (even though it is printed in the record by request of Defendants' Counsel).

Section VII of the Bill of Complaint alleges

> "That the said Charles W. Pinel by a good and sufficient deed dated the 23d day of January, 1914, and for and in consideration of the sum of six hundred dollars to him duly paid by the said Complainant Sarah Slyfield conveyed unto the said Sarah Slyfield all his right, title and interest and distributive share in the estate of the said Charles T. Pinel, deceased, and to the land aforesaid, which deed your orators herewith bring into court and to which your orators for greater certainty beg leave to refer and which deed is made a part and parcel of this Bill of Complaint as if herein incorporated."

and that allegation *must stand as a fact* until disproved in open court by proper evidence.

*Wetmore vs. Rymer*, 169 U. S. 115, 18 Sup. Ct. Rep. 293.

It has been held that the fact of valid defense to a cause of action, *although apparent on the face of the petition* does not diminish the amount that is claimed nor determine what is the matter in dispute; for who can say, in advance, that the defense will be presented by the Defendant, or if presented, sustained by the Court?

*Schunk vs. Moline, Milburn & Stoddard Co.*, 147 U. S. 500.

*Jones vs. Rowley*, 73 Fed. 286, and

"It has been several times decided by this Court that a suit cannot properly be dismissed by a Circuit Court when not involving an amount sufficient to come within its jurisdiction, unless the facts when made to appear on the record create a legal certainty of that conclusion." *The mere denial by affidavit* does not deprive the Court of jurisdiction.

*Put-in-Bay Water Works vs. Ryan*, 181 U. S. 431.
*Wetmore vs. Rymer*, 169 U. S. 115.

UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Michigan.

HERMAN H. PINEL and SARAH SLYFIELD, Complainants,
vs.
THOMAS F. PINEL, THOMAS F. PINEL as Special Administrator of the Estate of Edgar O. Pinel, Deceased, and Rachel Pinel, Defendants.

EASTERN DISTRICT OF MICHIGAN,
*Southern Division, ss:*

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify that the within and foregoing thirty-five pages of printed matter is a true and correct transcript of all the records and proceedings designated by solicitors for respective parties to be included in printed transcript of record on appeal in the above entitled cause; that I have compared the same with the originals so designated and on file and of record in my office, and that the same is a true and correct transcript of the whole and of every part thereof as designated.

In testimony whereof, I have hereunto set my hand and affixed the official seal of said court, at Detroit, in said District, this eleventh day of June, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-eighth.

[Seal of the U. S. District Court, Eastern District of Mich.]

ELMER W. VOORHEIS,
*Clerk United States District Court,*
*Eastern District of Michigan.*

Endorsed on cover: File No. 24,278. E. Michigan D. C. U. S. Term No. 534. Herman H. Pinel and Sarah Slyfield, appellants, vs. Thomas F. Pinel, Thomas F. Pinel as special administrator of the estate of Edgar O. Pinel, deceased, and Rachel Pinel. Filed June 19th, 1914. File No. 24,278.

# Supreme Court of the United States

HERMAN H. PINEL and SARAH SLYFIELD,

Appellants,

vs.

THOMAS F. PINEL, THOMAS F. PINEL as Special Administrator of the Estate of EDGAR O. PINEL and RACHEL CAMPBELL,

Appellees.

October Term, 1915.
No. 181.

## BRIEF FOR APPELLANTS.

Emil W. Snyder,
*Counsel for Appellants.*

Frank E. Robson
Of Counsel

DETROIT:
CONWAY BRIEF CO., 142-150 LAFAYETTE BOULEVARD.
1915.

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## LIST OF CASES REFERRED TO.

# Supreme Court of the United States

HERMAN H. PINEL and SARAH SLYFIELD,
Appellants,
vs.
THOMAS F. PINEL, THOMAS F. PINEL as Special Administrator of the Estate of EDGAR O. PINEL and RACHEL CAMPBELL,
Appellees.

October Term, 1915.
No. 181.

## BRIEF FOR APPELLANTS.

### STATEMENT OF THE CASE.

Appellants filed their Bill of Complaint in the District Court of the United States for the Eastern District of Michigan, for the purpose of vesting and quieting in Appellants the title to an undivided three-eighths interest in a certain farm located in Macomb County, in the State of Michigan (Rec. pp. 1-5). Defendants moved to dismiss the Bill of Complaint for the want of jurisdiction on five distinct grounds of which only the first two were submitted to the District Court as appears by the certificate of the District Judge (Rec. p. 28) and the motion for leave to file affidavits in opposition to the motion to dismiss (Rec. p. 13). The District Judge sustained the motion to dismiss (Rec. p. 12) on the first two grounds set up in said motion to dismiss and certifies to this Honorable Court that "the

jurisdiction in this case is in issue" (Rec. p. 28) and that the following questions are raised.

(1.) "Whether or not the amount in controversy is sufficient to give this Court jurisdiction." (Rec. p. 28.)

(2.) "Whether or not the parties to said cause are collusively joined." (Rec. p. 28.)

As the question of jurisdiction of the District Court is the sole question involved in this Appeal, the case comes properly before this Court on the certificate of the District Judge as to the question of jurisdiction in accordance with the provisions of Section 238 of the judicial code of the United States.

The facts in the case are as follows:

Complainants and Defendants are the children of one Charles T. Pinel who died June 26, 1888, leaving a last will and testament by the terms of which he gave the entire farm to the Defendants (in certain proportions) (Rec. p. 2.)

The will made no mention in any way, shape or manner of the Complainants, and the Bill of Complaint alleges that this omission was not intentional on the part of the testator, but was made by a mistake or accident (Rec. p. 2).

Section 9286 of the Compiled Laws of the State of Michigan of 1897 provides that "when any testator shall omit to provide in his will for any of his children, or for the issue of any deceased child, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section" (Rec. p. 2).

Complainants further allege that under the provisions of this statute they are entitled to an undivided three-eighths interest in the said farm, which interest is valued in the Bill of Complaint at forty-five hundred dollars and upwards over and above all encumbrances (Rec. p. 3).

The Bill also sets up that Complainants did not learn of the fact that the omission to provide for them was made by mistake or accident until about nine months before the commencement of this suit, and charges the fact to be that they were purposely misled by one of the Defendants as to the wishes of their father with regard to his last will and testament (Rec. p. 3).

The Bill then continues with recitals to the effect that Defendants deny the right of Complainants to an undivided three-eighths interest (Rec. p. 3); that neither Complainants nor Defendants, nor any one of them, are in actual possession (Rec. p. 4). (Note: Since this appeal was taken the mother of the parties hereto, who had the actual possession of the farm as life tenant under the will, has died and Defendants have taken forcible possession); that the recording of the will and assigning to Defendants their respective shares constitutes a cloud upon the title of Complainants to an undivided three-eighths interest and prevents them from making sale of it (Rec. p. 4); that Defendants claim the title to the whole of the land and do not intend to commence any action at law against Complainants to try the title (Rec. p. 4) and prays that Complainants be decreed to be the owners of an undivided three-eighths interest in said farm (Rec. p. 4) and that the title thereto be quieted in them (Rec. p. 4). The Bill was duly sworn to by one of Complainants (Rec. p. 5).

Complainants' three-eighths interest is figured thus: Charles T. Pinel had nine children but one died before marriage, leaving eight to share the estate (Rec. p. 2). Complainant Slyfield purchased the interest of one for an actual consideration of six hundred dollars (Rec. p. 2) and the bill alleges that this son also was omitted by mistake or accident from the will and that his rights are identical to those of Complainants (Rec. p. 3).

## Specifications of Errors Relied Upon.

1. The District Court of the United States for the Eastern District of Michigan erred in its decree dismissing the Bill of Complaint filed herein for want of jurisdiction on the ground that the amount in controversy is not sufficient to give the District Court jurisdiction.

2. The District Court of the United States for the Eastern District of Michigan erred in its decree dismissing the Bill of Complaint filed herein for want of jurisdiction on the ground that it does not appear by said Bill of Complaint that the amount claimed by each Complainant exceeds the sum of three thousand dollars.

3. The District Court of the United States for the Eastern District of Michigan erred in its decree dismissing the Bill of Complaint filed herein for want of jurisdiction on the ground that the parties to this cause are collusively joined.

4. The District Court of the United States for the Eastern District of Michigan erred in its decree dismissing the Bill of Complaint filed herein for want of jurisdiction on the ground that Complainants are barred by latches.

## ARGUMENT.

### I.

### The Amount in Controversy is Sufficient to Give the District Court Jurisdiction.

Appellees contend that "Plaintiff (Appellants) have separate causes of action, and it does not appear from said Bill of Complaint, that the amount claimed by each exceeds three thousand dollars," and the learned District Judge certifies this to be one of the questions in issue (Rec. p. 28). It is at once apparent that the question divides itself into two parts: Have Appellants necessarily separate actions, and must the claim of each exceed three thousand dollars, for otherwise the bill states a sufficient amount "which said interests are of the value of forty-five hundred dollars and upwards over and above all encumbrances" (Rec. p. 3).

"Prima facie the Court has jurisdiction because the sworn averments of the Bill (and the bill in the case at bar is duly sworn to by one of the Appellants) set out the essential jurisdictional facts" (namely in the case at bar that the amount in controversy exceeds the sum of three thousand dollars).

*Kilgore, et al., vs. Norman, et al.*, 119 Fed. p. 1008.

"Ordinarily, the plaintiff's claim with respect to the value of the property taken from him * * *, measures, for jurisdictional purposes, the value of the matter in controversy."

*Smithers vs. Smith*, 204 U. S., p. 642.

And a Federal Court will not dismiss a bill for want of jurisdiction on demurrer on the ground that the requisite jurisdictional amount is not involved in the suit where the *bill* alleges that the matter in controversy exceeds the value

The case of

*Walter vs. Northeastern Ry. Co.*, 147 U. S. 370, or 37 L. Ed. 206,

is a leading case on this proposition. This was a case where a Railroad Company enjoined the collection of taxes assessed by various counties. This Court dismissed the Bill for want of jurisdiction, because the amount of each claim or tax was less than the jurisdictional requirement, although the total amount was sufficient. The Court here lays down the rule,

> "In short the rule applicable to several Plaintiffs having separate claims, that each must represent an amount sufficient to give the Court jurisdiction, is equally applicable to several liabilities of different Defendants to the same Plaintiff."

The case is cited with approval in at least 30 cases in the Federal Courts.

In the case of

*Sinclair vs. Cooper*, or "*The Connemara*," 103 U. S. 754, or 26 L. Ed. 322,

which was a case where a claim composed of several claims of salvors totaling $14,198.00; but in which some of the claims were less than $5000.00, the jurisdictional amount, the Court held that in this case it had jurisdiction because although made up of different parts, it was one claim for one service, but then distinguishes between the two classes of cases using the following language:

> "In all the cases where we have held that several sums decreed in favor of or against different persons could not be united to give us jurisdiction on appeal, it will be found that the matters in dispute were entirely separate and distinct, and were joined in one suit for convenience and to save expense."

Citing several cases.

A like distinction is made in the case of

*Clay vs. Field*, 138 U. S. 479, or 34 L. Ed. 1044,

where it was held that a person having a dower interest of less than the jurisdictional amount, could not have her appeal considered in this Court, because although she had an interest in the property in distpute, her interest was separate and distinct from that of the other Defendant and must be of the required jurisdictional amount by itself to be within the jurisdiction of this Court. In regard to whose interests may be united, this Court here uses the following language:

> "Where their interests are distinct, and they are joined for the sake of convenience only, and because they form a class of parties whose rights or liabilities arose out of the same transaction, or have relations to a common fund or mass of property sought to be administered, such *distinct demands or liabilities cannot be aggregated together for the purpose of giving this Court jurisdiction by appeal, but each must stand or fall by itself alone.*"

In

*Bowman vs. Ry. Co.*, 115 U. S. 611, or 29 L. Ed. 503,

where in a damage suit the declaration was amended raising the amount claimed from $1200.00 to $10,000.00, to give jurisdiction, the Court said:

> "It is very well settled that our jurisdiction in an action in money is governed by the value of the matter actually in dispute in this Court, as shown by the *whole record, and not for the damages claimed by the prayer for judgment alone.*"

See also

*Hilton vs. Dickenson*, 108 U. S. 174, or 27 L. Ed. 688; and

*Gordon vs. Langert*, 16 Peters 97.

In

*Auer vs. Lombard*, 19 C. C. A. 72,

was a case where part of creditors of a bank sued part of

the shareholders of a bank under a Colorado Statute permitting it. The demand against one respondent is $1000, against the others $2000 or more. The sum of all the debts of the Complainants exceed $2000, but the debt of no one, exceeds that amount. Held,

> "The claims of the various Complainants are several and cannot be joined to make up the required jurisdictional amount."

Citing

> *Peper vs. Fordyce*, 119 Fed. Rep. 469, or 7 Sup. Ct. 287,

where it was held that unless the jurisdiction of the Court does not appear in the record, the case must be dismissed. In this case one of the Defendants was a citizen of the same State with the Plaintiffs.

> "This was fatal to the jurisdiction because Selta was an indispensable party, adverse in interest to the Plaintiffs, and there was no separate controversy between the Plaintiffs and Peper which would authorize the removal of the suit begun in the State Court on that account."

And further, citing *Wetherby vs. Stinson*, 62 Fed. 173 (C. C. A.), where disclaimer by one of the parties does not affect the jurisdiction where the jurisdiction depends on adverse citizenship.

In

> *Henderson vs. Wadsworth*, 115 U. S. 264, or 29 L. Ed. 377,

where a suit was brought to compel several heirs to pay their portion of the debts of deceased, Court says:

> "The amount in dispute on which the jurisdiction depends, is the amount of the judgment or decree which is sought to be reversed,"

and that

> "neither co-defendants or co-plaintiffs can unite their separate and distinct interests for the purpose

of making up the amount necessary to give this Court jurisdiction upon writs of Error or Appeal."

See

*Gibson vs. Shufeldt*, 122 U. S. Reps., page 30, or 30 L. Ed. 1083.

This was a case where property was assigned for the benefit of creditors, and action was brought to have assignment set aside as fraudulent. In this case the Court lays down the rule as follows:

"Generally speaking, however, it may be said that the joinder in one suit of several Plaintiffs or Defendants, who might have sued or been sued in separate actions, does not enlarge the Appellate jurisdiction. That when property or money is claimed by several persons suing together, the test is whether they claim it under *one common right*, the adverse party having no interest in its apportionment or distribution among them, or claim *it under separate and distinct rights, each of which is contested by the adverse party;* That when two persons are sued, or two parcels of property are sought to be recovered or charged, by one party in one suit, the test is whether the *Defendants'* alleged liability to the Plaintiff, or claim of property is *joint or several;* and that so far affected by such joinder, the right of appeal is mutual, because the matter in dispute between the parties is that which is asserted on the one side and denied on the other."

In

*Bowman vs. Bowman*, 30 Fed. 849 (C. C. Ill.), it was held that an allegation in a divorce suit, that the Defendant is the owner of valuable real estate and property interests and that he is receiving an income of not less than $10,000.00 per annum, is not sufficient to give Court jurisdiction.

In cases of

*Rich vs. Bray*, 37 Fed. Rep. 273,

Bill alleges that estate of William Bray has never been probated, etc., that Thomas Bray took possession and has since held possession of the said estate to the exclusion of the other heirs and prays that the shares of the heirs be distributed, etc. Court says:

> "It is also objected to that it does not *sufficiently appear* that the matter in dispute exceeds the sum of $2000.00. As the matter in dispute is a jurisdictional fact, it should be made to appear AFFIRMATIVELY ON THE FACE OF THE BILL. The only allegation from which any idea of the value of the property in controversy can be derived is contained in the following statement: 'The amount of which is unknown to said Complainants, but much more than two thousand dollars, over and above all just debts and funeral expenses.' How much more than $2000.00? This averment could be true if amount were only $2100.00 or less. Is this sufficient to give this Court jurisdiction? There are a large number of heirs or distributors to share in this property; and it is manifest on the face of the Bill that the interest of not one of them, nor the interest of all the Complainants combined, amounts to the sum in suit. Some of the heirs, who are admitted to be distributees, and whose respective shares would have to be reserved for them, are not made parties to the suit. Therefore the *position necessarily assumed by Complainants is, that their respective interests and rights are so far separate that any number of them may proceed with the litigation without the others.* I understand the rule in such a case to be, that where two or more parties may thus join AS A MATTER OF CONVENIENCE TO PREVENT MULTIPLICITY OF SUITS IN ONE ACTION, for the ascertainment and distribution of

their respective interests in a common fraud, the interest of each independent of the others, must amount to the sum of $2000.00, to give this Court jurisdiction."

And citing

*King vs. Wilson*, 1 Dill 556-568;
*Massa vs. Cutting*, 30 Fed. Rep. 1;
*Woodman vs. Latmer*, 2 Fed. Rep. 842;
*Scarer vs. Bigelows*, 5 Wall 208-210;
*Terry vs. Hatch*, 93 U. S. 44;
*Chatfield vs. Boyle*, 105 U. S. 231-234;

demurrer sustained.

See also

*Bland vs. Fleeman*, 29 Fed. Rep. 669.

In

*Busey vs. Smith*, 67 Fed. Rep. 15 (Ind.),

"It is insisted, however, because a suit may be brought jointly against all the heirs, that the Complainant may recover a joint and several judgment against all the Defendants, and as the aggregate amount recoverable from them exceeds $2000.00, the present Bill is within the jurisdiction of the Court. *The contention seems to be unfounded. It is necessary to join all the heirs in order to obtain a decree fixing the several liabilities of each, but this does not vary or enlarge the extent of their several liabilities. The obligation still remains several and not joint.*"

Citing

*Walter vs. Ry. Co.*, 147 U. S. 370, or 37 L. Ed. 206.

In the case of

*Scarer vs. Bigelow*, 5 Wall 208, or 18 L. Ed. 595, where several persons having judgments against Defendant, each for less than the jurisdictional amount of two thousand dollars, joined in an action against Defendant.

"In no case is it permissible for the Court to substitute itself for the jury."

*Barry vs. Edmunds,* 116 U. S., p. 565; 29 L. Ed., p. 734.

*Smithers vs. Smith,* 204 U. S., p. 645; 51 L. Ed., p. 661.

And so also

The jurisdiction may still be good even if some of the property has been given to the Plaintiff and for the express purpose of commencing suit.

*In re Cleland,* 218 U. S. 120; 54 Law, 962.

In closing we wish to call the attention of the court to the Rule that

> The burden of proof to sustain a plea to the jurisdiction is placed upon the Defendant *and must be established* by a preponderance of the evidence by proof such as the law requires in cases of this character.
>
> *Butters vs. Carney,* 127 Fed. 622,

and in the case at bar Defendants have *proved* absolutely *nothing,* for the simple reason that *no hearing* on the facts was had, just an argument on demurrer, and Defendants' Counsel (and unfortunately the Court also) *assumed* all matters contained in the motion to dismiss to be true, and the motion wasn't even signed by Defendants, let alone sworn to.

"The burden of proof rests upon the Defendants. The question ought to be determined upon full proof when the parties have the right *to examine and cross-examine the witnesses* to establish the essential and necessary facts."

*Kilgore vs. Norman,* 119 Fed., 1008.

We respectfully submit that the Court erred in sustaining Defendants' motion to dismiss for want of jurisdiction and ask that the decree of the District Court for the Eastern District of Michigan be reversed with costs to appellants.

Emil W. Snyder,

*Counsel for Appellants.*

# Supreme Court of the United States

HERMAN H. PINEL and
SARAH SLYFIELD,
Appellants,

vs.

THOMAS F. PINEL,
THOMAS F. PINEL as Special Administrator of the Estate of Edgar O. Pinel, Deceased, and
RACHEL PINEL (should be Campsell),
Appellees.

October Term, 1915.
No. 181.

## BRIEF OF DEFENDANTS, THOMAS F. PINEL, INDIVIDUALLY, AND AS SPECIAL ADMINISTRATOR.

L. C. STANLEY,
Detroit, Mich., and
LYNN M. JOHNSTON,
Mt. Clemens, Mich.,
Solicitors for Thomas F. Pinel, Individually, and as Special Administrator.

DETROIT:
CONWAY BRIEF CO., 141-150 LAFAYETTE BOULEVARD.
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# Supreme Court of the United States

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|---|---|
| HERMAN H. PINEL and SARAH SLYFIELD, Appellants, vs. THOMAS F. PINEL, THOMAS F. PINEL as Special Administrator of the Estate of Edgar O. Pinel, Deceased, and RACHEL PINEL (should be Campsell), Appellees. | October Term, 1915. No. 181. |

## BRIEF OF DEFENDANTS, THOMAS F. PINEL, INDIVIDUALLY, AND AS SPECIAL ADMINISTRATOR.

This case was brought by two Plaintiffs, Herman H. Pinel and Sarah Slyfield, against three Defendants, Thomas F. Pinel, individually and as special administrator of the Estate of Edgar O. Pinel, and Rachel Campsell, for the purpose of securing to Plaintiffs a title to an undivided three-eighths of the lands devised by Charles T. Pinel to the Defendants. It is further claimed by the Bill of Complaint that Plaintiffs and another son of Charles T. Pinel were omitted by mistake or accident from the will of their father, the said Charles T. Pinel, deceased, and that under the Michigan statute in such cases they were entitled to inherit their respective shares the same as if no will had been made. It is further alleged in said Bill of Complaint that Sarah Slyfield has purchased of said Charles W. Pinel his distributive share of said estate for $600.00 (Record pp. 1-5).

On motion by Defendants Thomas F. Pinel (Record pp. 6-11) this bill was dismissed by the District Court for want of jurisdiction (Record p. 12). From that decree Plaintiffs appealed to this Court.

## ARGUMENT.

Defendants Thomas F. Pinel, individually and as special administrator, denies that this Court has any jurisdiction in the said matter, for the reasons set forth in the Motion to Dismiss (Record pp. 6-11), viz:

I. The record does not show the necessary jurisdictional amount in dispute.

II. The Plaintiffs are collusively joined, and the alleged transfer from Charles W. Pinel to Sarah Slyfield is colorable, and is a collusive transfer for the purpose of giving the Court jurisdiction.

III. This action is barred by laches.

IV. Necessary parties are omitted from the proceedings.

V. The lands as described were never owned by Charles W. Pinel.

We wish to consider the subject in the order and under the headings above given.

## I.

## JURISDICTIONAL AMOUNT.

The rulings of this Court require that wherever it is necessary that the amount in controversy appear in the pleadings it must be definitely alleged. The nearest approach to this requirement is found in paragraph IX of the Bill of Complaint (Record p. 3), where it is alleged that the undivided 3/8ths interest of Complainants is of the value of $4500.00 and upwards. But it does not allege what the interest of each Plaintiff is worth, nor what amount is claimed against each Defendant by each Plaintiff, nor by the Plaintiffs combined. We submit that under the decisions of this Court this is a fatal defect in the pleadings. Under the allegations of the Bill each Plaintiff has no claim against any Defendant, or the Defendants combined, unless a mistake as to *him* or *her* was made in the will of Charles T. Pinel. Each one has a separate and distinct cause of action not founded on any common basis, but upon a mistake of Charles T. Pinel as to him or her. The will of Charles T. Pinel gives to each Defendant a definite portion of land, so that under the decisions of this Court, no Plaintiff is within the jurisdiction of this Court, unless he or she has a claim of at least $3000 against some one Defendant alone, and this fact appears definitely in the allegations of the Bill of Complaint. We submit that this is not so shown; and we further submit that our contention is well founded in the decisions of this Court.

The decisions would imply that although the rule is plain that separate claims or suits cannot be combined to aggregate the jurisdictional amount, and be heard in the Federal Court, unless each of such claims or Plaintiff's interest is the necessary $3000; yet in applying this rule, and distinguishing between separate and joint actions, the Courts have had much difficulty. For that reason we cite somewhat at length a number of cases as follows:

allegation that a 3/8th interest is $4,500), is probably fictitious. It is further evident that this valuation does not take into consideration the mortgage and other liens on the Pinel lands, nor the $500 lien by the heirs of Bessie Pinel. From these facts it must appear to the court that the allegations of the bill of complaint, viz., That 3/8th interest of plaintiffs is $4,500—is not the true amount and consequently the amount of Herman Pinel's 1/8th interest is less than $1,500, and the alleged 2/8th interest of Sarah Slyfield is less than $3,000. They are so much less that even the combined interests of plaintiffs is less than $3,000.

But when we further consider that each action is separate and distinct both as to plaintiffs and defendants, and that the interest of Sarah Slyfield is made up by adding to her own alleged 1/8th interest the alleged 1/8th interest of Charles W. Pinel conveyed to her for $600 by what defendants claim is clearly a colorable and collusive transfer, there is nothing left within the jurisdiction of this court. And even so, there is not so much as an allegation to show in any way what amount any or all of plaintiffs claim against each defendant, nor any allegation of the citizenship of Charles W. Pinel, who is alleged to have conveyed his interest to Sarah Slyfield.

To these defects are also added the objections in this brief as to parties and descriptions of land, each one of which would appear to be fatal, besides the very grave objection of 25 years of laches in bringing any action at all.

If plaintiffs have any real rights to litigate, there is no reason why they could not just as well have brought their action in the Michigan State court. We think the record shows sufficiently clearly that this whole matter is in this court more for the purpose of annoying Thomas Pinel with expensive and disagreeable litigation than for the purpose of establishing any real rights which plaintiffs sincerely

believe in, and we therefore respectfully ask that this bill be dismissed with costs in favor of defendant, Thomas T. Pinel.

## REPLY TO PLAINTIFFS' BRIEF.

Since sending the foregoing portion of this brief to the printer, Defendant has receiveyd copy of Plaintiffs' brief, to which we respectfully submit the following reply.

Counsel for Defendant has examined the cases cited by Plaintiffs with considerable care and finds nothing there which at all changes the rule of law as laid down by the foregoing cases. In fact, some of Plaintiffs' cases are also cited by Defendant. A careful reading of the cases cited by Plaintiff will disclose the fact that many of these cases are long involving many facts and principles of law not pertinent to the case at bar, but controlling the decision in the case; or the whole rule is not cited by Plaintiff. For instance in the case of *Clay vs. Field* cited by both parties, Plaintiff has omitted to continue with his quotation and thus give the part of the rule which is of most importance to Defendant. The case of *Put-in-Bay Water Works vs. Ryan* is a Replevin Suit, and the citation from it in reference to Affidavit (Plaintiffs' Brief p. 11) is not applicable to this case. But ever here the provision is made "unless it appears to the satisfaction of the Court." The affidavits in the case at bar are a part of Defendants' Motion, and filed and considered with the motion, and are as much a part of the record as is Plaintiffs' Bill of Complaint, and deserving the same consideration, under the rule that the jurisdictional amount is determined by the whole record as shown by the cases already cited of *Bowman vs. Ry. Co., Hilton vs. Dickenson, Gordon vs. Langert, Lehigh Mining & Manufacturing Co. vs. Kelly, and Bowman vs. Bowman.*

If Plaintiffs' Counsel did not consider the affidavits a part of the record, why did he go to this expense and trouble of filing a motion for leave to introduce his affidavits into

the record (Record pp. 12-13). In his Motion it is alleged—"It is necessary that the affidavits be incorporated into the record as part of Complainants' showing in opposition to the Motion to dismiss." (Record p. 13).

In the case of

*Barry vs. Edmunds* (Pl. Brief p. 12),

This Court says in substance, that if the evidence is legally sufficient the Court finds the damages stated in the declaration was colorable and is beyond reasonable expectation of recovery, it is not within the jurisdiction of this Court. Thus maintaining the rule that the Court has the right to consider everything in connection with the case, to determine whether or not the jurisdictional amount is sufficient.

The case of *In Re Cleland* cited by Plaintiffs (Pl. Brief p. 12) concerned a transfer of stock (not Real Estate) under circumstances which in no way controverts the rule of colorable transfers of Real Estate, as laid down in the cases already cited by Defendant.

## OTHER MATTERS IN PLAINTIFFS' BRIEF.

### *Statement of Facts.*

On page 1 of Plaintiffs' brief, it is stated as a fact that only two of the five points of Defendant's motion was submitted to the lower Court. We respectfully submit that this is not the case. The whole motion was submitted. There is nothing in the record to show it was not. The certificate of the District Judge (Record p. 28) enumerates all of the grounds of the motion to dismiss and then adds—"And this Court further certifies that in said cause the jurisdiction of this cause is in issue and further certifies to the Supreme Court of the United States said question of jurisdiction raised by said motion to dismiss the said Bill of Complaint ON THE GROUNDS AFORESAID" and then enumerates two of them.

*Assignment of Errors.*

Plaintiff assigned error on all the points contained in Defendant's motion—the three points which he claims were not submitted being referred to in his assignments of error Nos. V, VI and VII (Record p. 30). One of these points which he claims were not submitted he relies upon in his 4th division of errors relied upon (Record p. 4). How could the Court have erred on these points in deciding the case if they were not submitted? It may be that the lower Court decided the case in the Defendant's favor without listening to an extended argument on each division of the motion; but the whole motion was filed, and it would have been just as much submitted if Counsel for Defendant had done nothing more than call the Court's attention to the motion.

*Errors Relied Upon.*

Plaintiffs' Counsel has not included in his errors relied upon, the IV and V division of Defendant's motion (Record p. 7), relative to parties and incorrect description of the Pinel lands. It is the understanding of Defendant that under the rule in such cases, Plaintiff is considered as satisfied with the decision of the Court in respect to these points not mentioned in the errors relied upon. And therefore it is possible that the Bill of Complaint might be dismissed even if the Court could conclude that the lower Court erred in all the assignments of error relied upon.

*Nature of Action.*

Although the Bill of Complaint purports to be a Bill to quiet title, and Plaintiffs so treat and describe it on page 3 of their brief, yet this is not such a Bill at all. This is a *Bill to get title, not to quiet it.* In order to quiet title in Plaintiffs we submit there must be some prima facia title in them. But in this case there is no record or paper

of any kind showing the Plaintiffs have the least interest in these lands—nor is any claimed by Plaintiffs. Consequently cases cited by Plaintiff on quieting title are not applicable to this case so far as the facts are concerned.

*Case No. 51.*

Counsel for Plaintiffs inquires by what rule Case No. 51 can be considered by this Court. (Pl. Brief p. 10). The Bill of Complaint in this case is referred to as part of the motion filed in the lower Court (Record pp. 7-8), and is one of the records of that Court of which the lower Court takes Judicial notice; and is in express terms made a part of the motion "the same as if attached thereto." For this reason it was printed in the record and is as much a part of this case as if a copy of said Bill of Complaint had been attached to the motion.

*Allegations Indefinite.*

We further respectfully submit that an amount which is so alleged in the Bill of Complaint that it is necessary to "figure" (Pl. Brief p. 3) it out in order to determine the amount claimed by each Plaintiff against each Defendant is not such an *affirmative allegation* as is required by the cases already cited in this brief to show on the face of the pleading that the necessary jurisdictional amount is involved. That is, an allegation that a $\frac{3}{8}$ths interest is worth $4500 is not such an affirmative allegation that the Court can determine the amount claimed by each Plaintiff against each Defendant and consequently under the pleadings this case cannot properly be considered within the jurisdiction of this Court.

*Rich vs. Bray*, 37 Fed. Rep. 273.

*Laches.*

Counsel for Plaintiffs in his brief page 9 makes a desperate effort to explain the reason for the long delay in commencing this action and quotes paragraph 10 of his Bill of Complaint and then asks what could be more specific. We ask what, in legal pleadings, could be less specific. We respectfully invite the careful examination of this paragraph and venture that it is impossible to tell from the allegations therein whether Plaintiffs were first advised on their legal rights under the Michigan Statute before they knew the alleged facts; or whether they first assumed to have learned of the alleged facts and then sought the legal remedy. There is not a definite allegation in it as to what their deceased father intended to do for them in his will nor in what way Thomas F. Pinel deceived them. The whole paragraph gives one the impression that they were first advised of the statute and then attempted to bring suit under it without giving the facts much consideration. It is inconceivable that Charles W. Pinel could have lived after his father's death for about 25 years in the very house in which his father died with his widowed mother, and part of the time with his sister Sarah Slyfield and not have discovered all the alleged facts of omission or mistake many years before the beginning of this suit. Anyway after a lapse of 25 years good pleading would require that the Plaintiffs make a cause of action far more definite than is shown by this paragraph, if they are doing equity and expect it.

On page 8 of Appellants' brief it is asserted that this action arose June 26, 1888. If this is true, then Plaintiffs are absolutely barred by the Michigan Statute of Limitations. This statute, so far as applicable, is as follows:

> (9714) Section 1. "That after the thirty-first day of December, in the year of our Lord eighteen hundred and sixty-three, no person shall bring or maintain any action for the recovery of any lands, or the

The matter in dispute is determined by the whole record as shown by cases cited above.

*Bowman vs. Ry. Co.*, 115 U. S. 611, or 29 L. Ed. 503;

*Hilton vs. Dickenson*, 108 U. S. 174;

*Gordon vs. Langert*, 16 Peters 97;

*Lehigh Mining & M'f'g. Co. vs. Kelly*, 160 U. S. 590 or 40 L. Ed. 444;

*Bowman vs. Bowman*, 30 Fed. R. 849.

## COLORABLE AND COLLUSIVE TRANSFER.

We now feel that we have shown conclusively that Herman Pinel has no possible standing in this Court. But if there are any doubts as to further consideration of Sarah Slyfield being within the jurisdiction, we invite the attention of the Court to a comparison of the allegations of paragraphs VII and IX of the Bill of Complaint in this cause (Record pp. 2-3) with paragraph 5 of a former Bill of Complaint (Record p. 20) filed by Herman Pinel alone, not three months before the Bill of Complaint in the present cause was filed. It will there appear that on Nov. 5th, 1913, (the date of filing that Bill), Herman Pinel claimed to own "by proper deed of conveyance, the shares of said Sarah Slyfield, Charles W. Pinel, and James D. Pinel, and now owns an undivided one-half interest in the said estate, which half interest is worth upwards of Five Thousand Dollars."

But after this Bill was promptly dismissed by the District Court, on January 30th, 1914 (the date of filing the Bill of Complaint in the present suit), without any explanation whatever, Herman Pinel does not claim to own any but his share of said estate, and Sarah Slyfield not only has her own share, which, three months before was conveyed to Herman Pinel, but she now has also the share of Charles

W. Pinel, which was also conveyed to Herman Pinel. And furthermore the value of the Pinel Farm has, according to the said allegations raised in value $2000.00 in this same three months' time.

The cause of all this jugglery of parties and values, is too apparent on the face of it to need any further notice. The Plaintiffs have first sought to bring an action in the Federal Court against Thomas F. Pinel, under the name of Herman Pinel. When they were defeated in this, they attempted to cure the defect by joining parties. But Charles W. Pinel is a resident of the same State, County and District, with Thomas F. Pinel, so in order to escape the jurisdictional consequences of having him as a party in case, they alleged that he had sold out to Sarah Slyfield.

We do not consider a citation of cases necessary on this point, but briefly refer the Court to the following:

A comparatively recent and leading case on colorable transfers is found in the case of

*Lehigh Mining and Mfg Co. vs. Kelly*, 160 U. S. 590, or 40 L. Ed. 444.

In this case several cases are cited and digested by the Court, and many of the facts and circumstances therein found are applicable to the case at bar. This case concerned the transfer of land from one corporation to another for the evident purpose of coming within the jurisdicition of this Court. In discussing the question this Court lays down the rule, in language as follows: "Although the parties have agreed that the above conveyance passed "all title and interest" of the Virginia Corporation organized under the laws of Pennsylvania, it is to be taken upon the present record in view of what the agreed statement of facts contains, AS WELL AS WHAT IT OMITS TO DISCLOSE."

The language is particularly applicable to the present case when we consider the 25 years that Plaintiffs waited before taking any action, the allegation of the two Bills

of Complaints mentioned above, and the omission of the Plaintiffs to allege in the first Bill any consideration whatever for the transfers to Herman Pinel of the interests of Charles W. Pinel, James D. Pinel, and Sarah Slyfield; and the omission in the second Bill to allege how within a space of three months later, the title again becomes vested in Sarah Slyfield and Charles W. Pinel; what became of the interest of James D. Pinel, which Herman Pinel had so recently acquired by deed of conveyance in the first Bill of Complaint; the omission to state what Charles W. Pinel received for his interest when he conveyed to Sarah Slyfield for $600.00 (whether cash or something of a ficticious value), and the further failure to allege that any of these deeds were ever recorded. The fiction of the whole affair appears on the face of it. James D. Pinel is a resident of the State of Michigan, and consequently it was necessary to make him a Defendant or leave him out. Plaintiff chose the latter course, and made no explanation of how Herman Pinel disposed of his interest after acquiring it. They evidently considered that the easiest way out of a bad mess

Another very pertinent case is

*Maxwell's Lessee vs. Levy*, 2 Dall. 381, or 1 L. Ed. 424.

In this case land was conveyed with apparent purpose of creating the necessary diverse citizenship, and this Court dismissed the case for the reason that it appeared to be a colorable conveyance.

Other cases are the following:

*Maxwell's Lessee vs. Levy*, 4 Dall. 330, or 1 L. Ed. 854.

*Williams vs. Township of Nottawa*, 104 U. S. 211, or 26 L. Ed. 719.

*Hayden vs. Manning*, 106 U. S. 586, or 27 L. Ed. 306.

*Providence S. L. A. S. vs. Ford*, 114 U. S. 635, or 29 L. Ed. 261.

## III.

### Laches.

If anything further is necessary to complete Defendants' case, we refer to the time which elapsed between the death of Charles T. Pinel in June 1888, and the filing of the Bill of Complaint in this case January 30th, 1914, (Record page 2).

No reason whatever is given for this long delay in taking action to secure the alleged rights of Plaintiffs, except that they did not know their legal rights, or they were 25 years in finding out alleged facts, the evidence of which at least Charles W. Pinel had lived in the midst of since his father's death. It is fundamental that everybody knows the law, and ignorance of it excuses no one for not obtaining his legal rights. We submit that this was a flagrant case of laches which absolutely bars Plaintiff from all action in this Court whatever.

## IV.

### Necessary Parties Not Joined.

According to the allegations of paragraph VI of the Bill of Complaint (Record page 2), there were living at the date of filing said Bill, nine persons interested in the lands or property in question. Of these only five are in any way made parties to this suit. James and George Pinel, sons of Charles T. Pinel deceased, are not in any way mentioned in any other part of the Bill; But they are among the heirs of Bessie Pinel, who was given by the will of Charles T. Pinel, a contingent lien on the lands or property herein concerned. (Record page 8). As such heirs they are di-

rectly interested in these proceedings. Thomas F. Pinel is also interested in knowing whether or not they claim any of this land by a similar claim of omission or mistake from the will of their father. As the pleadings in this case now stand, there is no reason why either James or George Pinel, or both of them, could not start another suit for themselves on the same grounds as the present Plaintiffs have done. And this to, regardless of what may be the decision of this Court. But if they were made parties to this suit, they would be precluded from such action; and Defendant would be saved the risk and multiplicity of suits.

## V.

### Property Described Not Owned by Parties.

The Pinel lands are in the Township of Clinton. The Pinel lands as described in the Bill of Complaint are in the Township of Erin (Record page 1). We assume that this is an error in description, but it must nevertheless be amended before any disposition can be made by this Court of the property in dispute in this case. This error was pointed out in the lower Court, yet no amendment was asked by Plaintiffs.

## SUMMARY.

It appears to the counsel for defendants that this court is justified in dismissing the bill of complaint on any one of the five points herein considered. According to the allegations in the bill of complaint, plaintiffs' action rests exclusively on the assumption that Charles T. Pinel omitted, by mistake or accident, to provide for plaintiffs in his will. This being the case, of course, the mistake as to one plaintiff is no grounds whatever for assuming that he made a mistake as to any one else, and thus their actions, if they have any, are separate and distinct—each one wholly dependent upon the separate mistake of Charles T. Pinel. Under the decisions of this court, therefore, each plaintiff must have a claim of at least $3000 against defendants in order to be within the jurisdiction of this court. As each defendant herein represented has a separate and distinct interest in the estate of Charles T. Pinel, deceased, according to the terms of his will, which was duly probated, each plaintiff must have in order to be within the jurisdiction of this court at least a $3000 claim against each defendant, and this must be shown affirmatively in the allegations of the bill of complaint according to the opinion of this court in *Walter vs. Ry. Co.*, above cited, and other cases already referred to in this brief.

It further appears from the decisions of this court already quoted in this brief, that the jurisdictional amount is determined not alone by the allegations in the bill of complaint, but by the whole record. An examination of the affidavits attached to the motion of defendant (Record pages 8-11), and the unexplained rise in plaintiffs' valuations as shown by the allegations in the two bills of complaint (Record, pages 3 and 20), will disclose the fact that a valuation of the Pinel lands at $12,000 (as a result the

This Court dismissed the appeal for want of jurisdiction, because the several judgments could not be joined to make the regular jurisdictional amount, the Court holding that no judgment creditor had an interest in the amount in excess of his judgment, which was the amount in controversy and then adds:

> "The only plausible ground upon which the jurisdiction can be sustained in the case before us is, that the several judgment creditors are proceeding against a common fund which each is interested to have applied to the payment of his demand. The answer is the interest of the judgment creditors in the common fund could not exceed the amount of their several judgments, and if these are under $2000.00, the reason exists for cutting off the appeal as if the suit had been separate and not joint."

In the case of

> *McDaniel vs. Traylor*, 196 U. S. 415, or 49 L. Ed. 533,

and the cases herein cited, the cases are distinguished showing that in order to make the sum of the claims or amounts involved, the jurisdictional amount, such sums must have their origin in a common source : nd dependent upon a decision which would affect them all in the same way as is shown by the following language:

> "In speaking of the aggregate of claims against an estate the Court says: 'The essence of the suit is the alleged fraudulent combination to fasten upon the estate a liability for debts of John Evans, which were held by the Defendants, and which they, acting in combination procured, in co-operation with James Evans, and to be allowed as claims against the estate of Hiram Evans' . . . 'If the Plaintiffs do not prove such a combination and conspiracy, in respect, at least, of so many of the specified claims as in the aggregate will be of the required amount, then their suit must fail for want of juris-

diction in the Circuit Court; for *in the absence of the alleged combination, the claim of each Defendant must, according to our decisions, be regarded, for purposes of jurisdiction, as separate from all others.'"*

We further submit that the whole record in the case shows that the amount in controversy is *not* $3000.00. For notwithstanding the allegations that the combined 3/8ths interest of Plaintiffs is $4500.00, and that of Sarah Slyfield consequently $3000.00, yet because of reasons above given, each one has a separate and distinct cause of action. Herman Pinel is out of the jurisdiction on the face of the pleadings, because his claim is only about $1500.00. The 1/4th interest of Sarah Slyfield is made up of her 1/8th interest and that purchased from Charles W. Pinel of his 1/8th interest for $600.00, as shown in the Bill of Complaint, paragraph VII, (Record p. 2). Hence we must conclude that the contracting parties did not consider a 1/8 interest worth more than $600.00. So that notwithstanding the allegations to the contrary, Plaintiffs appear to have actually considered their interests less than the jurisdictional amount. This fact is further borne out by the affidavits attached to Defendants motion, where it appears from competent disinterested persons that the total valuation of all the Pinel lands free and clear from encumbrances is not much in excess of $5000.00 or $6000.00; 3/8ths of which could of course be less than the jurisdictional amount even though the combined amounts of Plaintiffs' claims were considered the amount in controversy.

To be sure Plaintiffs at last succeeded in getting into the record some affidavits in opposition to those of Defendants; but if the Court will compare them, it will find them verbatim copies of each other except as to names, and thus lacking the marks of bona fide affidavits, by persons giving originally their views on the subject.